

These are the tentative rulings for civil law and motion matters set for Thursday, October 24, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, October 23, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. S-CV-0024716 Clippinger Investments Properties, Inc. vs. Atoyan, Greg

The unopposed Motion for Earnings Withholding Order is granted. The moving party may proceed with an application for withholding order as to non-debtor spouse, Narine Ayunts.

2. S-CV-0027932 Maria Montessori Charter Acad vs. Rocklin Un. School Dist

MMCA's Motion for Summary Judgment and/or Summary Adjudication and RUSD's Motion for Summary Judgment and/or Summary Adjudication are both continued, on the court's own motion, to November 7, 2013 at 8:30 a.m. in Department 40. The court apologizes for any inconvenience to the parties.

3. S-CV-0030126 Cappawana, George, et al vs. Centex Real Estate Corp., et al

Cross-defendant's Motion for Determination of Good Faith Settlement is granted in its entirety. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasors' proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

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4. S-CV-0030828 Crowder, Asia vs. Squaw Valley Preserve, Inc., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Plaintiffs' unopposed Motion for Preliminary Approval of Class Action Settlement is granted. The court has broad discretion in determining whether (1) a settlement is fair and reasonable, (2) the class notice is adequate, and (3) certification of the class is proper. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235.) The court has carefully reviewed and considered the joint stipulation of class action settlement, plaintiff's moving papers, and defendants' non-opposition filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair and reasonable.

For the purposes of settlement, the court hereby certifies the classes as defined in Paragraph 1(x) of the Joint Stipulation of Settlement and Release Between Plaintiff and Defendants. The court preliminarily approves the joint stipulation of settlement and approves the proposed form of the notice of settlement. The proposed order attached as Exhibit C to the Joint Stipulation of Settlement shall be the order of the court. Plaintiffs shall modify the proposed order to include the scheduled dates in preparation for the final approval hearing, which shall be set for March 6, 2014 at 8:30 a.m. in Department 43.

5. S-CV-0031130 Seuell, Michelle vs. Skim X Holdings, Inc., et al

Plaintiff's unopposed Motion for Summary Adjudication is granted. The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.) Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. (CCP§437c(p)(1).)

To prevail in an action for breach of contract, plaintiff must show: (1) the existence of a contract between the parties; (2) the plaintiff's performance or excuse for nonperformance; (3) the defendant's failure to perform (breach); and (4) resulting damages. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.) Plaintiff has established that the parties entered into a loan agreement. (Plaintiff's SSUMF Nos. 8-10.) Plaintiff provided defendant with monies as outlined in the agreement. (*Id.* at Nos. 12, 13, 27.) The defendant breached the agreement by failing to make the monthly installment payments. (*Id.* at Nos. 18, 20, 22, 24.) Plaintiff suffered damages of \$275,579.15 in damages as a result of defendant's breach. (*Id.* at Nos. 30-32.) Since plaintiff has met her prima facie burden, shifting the burden of proof, and defendant has failed to establish a triable issue, plaintiff is entitled to summary adjudication of her first cause of action for breach of contract.

6. S-CV-0031148 Mazzoni, Nello, et al vs. Centex Real Estate Corp., et al

Cross-defendant's Motion for Determination of Good Faith Settlement is granted in its entirety. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasors' proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

Cross-defendant's request for telephonic appearance is granted. Cross-defendant is informed that he must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

7. S-CV-0031332 Tsarnas, Alex vs. City of Roseville, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Defendants' Motion for Summary Judgment or, in the alternative, Summary Adjudication

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted in its entirety pursuant to Evidence Code section 452.

Ruling on Motion

Defendants' motion is granted in part. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure §437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (Code of Civil Procedure §437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The moving defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (Code of Civil Procedure §437c(p)(2).) Once the defendant meets this initial burden, the burden then shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (*Ibid.*)

Essential to any motion for summary judgment or summary adjudication is establishing its parameters. The pleadings serve as the "outer measure of materiality" for a motion for summary judgment in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs*

v. City of Victorville (2008) 163 Cal.App.4th 1242, 1258.) In reviewing the complaint, plaintiff asserts three separate causes of action: (1) Section 1983 violations, (2) false imprisonment, and (3) negligence.

As to the first cause of action for Section 1983 violations, plaintiff alleges he was “detained without probable cause under the Fourth Amendment of the United States Constitution, and not to be deprived of liberty and property without due process of law under the Fourteenth Amendment of the United States Constitution. The physical force used by defendants violated plaintiff’s Fourth Amendment rights to be free from excessive force. Moreover, by conducting the illegal detention of plaintiff in the manner in which they did, defendants and each of them further violated the rights of plaintiff.” (Complaint ¶31.) The primary allegations in the first cause of action are violations based upon an alleged illegal search, seizure, and excessive force.

Defendants are correct that the doctrine of collateral estoppel may apply to subsequent civil proceedings based upon a Penal Code §1538.5 suppression motion ruling. (*McGowan v. City of San Diego* (1989) 208 Cal.App.3d 890, 895.) The application of collateral estoppel is appropriate where (1) the prior conviction is for a serious offense so that the defendant is motivated to fully litigate the charges; (2) there has been a “full and fair trial” to prevent convictions of doubtful validity being used; (3) the issue on which the prior conviction is offered was decided in the criminal proceeding; and (4) there is privity between the party asserting collateral estoppel. (*Ibid.*) Here, the doctrine bars the first cause of action.

The prior suppression motion addressed a charge of willfully resisting a peace officer under Penal Code section 148(a) in *People v. Alex Tsarnas*, 62-107483. (Defendants’ SSUMF Nos. 1-3.) In challenging the charges, defendant brought a motion to suppress based upon unreasonable search and seizure along with a lack of probable cause. (*Id.* at Nos. 4-7.) A hearing was held on defendant’s motion where defendant was afforded the opportunity to present evidence and cross-examine witnesses. (*Id.* at Nos. 8-12.) The trial court denied the suppression motion finding exigent circumstances permitted the warrantless entry into plaintiff’s home and probable cause existed for plaintiff’s arrest. (*Id.* at No. 13.) The current action is based upon circumstances that led to the charges in 62-107483 and the first cause of action alleges injury based upon this incident. (*Id.* at No. 14.) Based upon this, the defendants have met their initial burden and shifting it to plaintiff to show a triable issue of material fact.

Plaintiff, however, has failed to establish sufficient facts to create a triable issue as to the first cause of action. His supporting evidence is insufficient to challenge the applicability of the collateral estoppel doctrine. Plaintiff offers a single declaration, his own, and asserts that this sufficiently creates a triable issue of material fact. “In ruling on the motion, a court must consider both the evidence ‘and all inferences reasonably deducible from the evidence....’ [Citation.]” (*KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028.) However, the reasonable inferences that are created by the submitted evidence must be more than mere conjecture. “An inference cannot be based on mere possibilities; it must be based on probabilities. [Citations.]” (*Aquimatang v.*

California State Lottery (1991) 234 Cal.App.3d 769, 800.) Plaintiff's evidence offers merely a conjecture of inferences to challenge applicability of the doctrine of collateral; he fails to establish any triable issues of material fact to sufficiently withstand summary adjudication as to the first cause of action.

The second cause of action alleges an action for false imprisonment. Plaintiff alleges that the defendants' conduct constituted a false imprisonment and he suffered damages. (Complaint ¶¶33, 34.) Defendants once again contend that the doctrine of collateral estoppel bars this cause of action. However, the insufficiency here is based upon the third factor: whether the issues in the criminal proceeding and civil proceeding are identical. The suppression hearing did not address issues of false imprisonment. Since there is no prior finding on this issue, it cannot be said that the issues in the criminal proceeding and this civil action are identical. Thus, the doctrine of collateral estoppel does not apply to the second cause of action. Since defendants provide no other theories to challenge the second cause of action, they have failed to meet their initial burden and summary adjudication is denied as to the false imprisonment action.

The final cause of action is for negligence. The complaint alleges that the defendants were negligent in performing their duties and failed to properly discharge their duties to act with reasonable care. (Complaint ¶36.) As discussed in reference to the second cause of action, the doctrine of collateral estoppel does not apply since the suppression hearing did not elicit findings as to the defendants' negligence. Thus, collateral estoppel does not apply to the third cause of action.

The remaining challenge to this cause of action is made by defendant City of Roseville, asserting that the negligence action fails as to the City of Roseville since the complaint does not allege facts of any statute to support that the City of Roseville is liable for negligent selection, hiring, training, and supervision of its employees. "When a motion for summary judgment challenges the sufficiency of the pleadings rather than the evidence supporting the allegations contained therein, it is tantamount to a motion for judgment on the pleadings and may be treated as such by the trial court. [Citation.]" (*Taylor v. Lockheed Martin Corp.* (2000) 78 Cal.App.4th 472, 479.) The court treats the defendant's contentions as seeking a judgment on the pleadings since it challenges the sufficiency of the complaint. As it pertains to defendant City of Roseville, the negligence action is insufficiently pled since plaintiff fails to allege any statutory basis to support a negligence action against the City of Roseville. (Government Code §815; *Palmer v. Regents of the University of California* (2003) 107 Cal.App.4th 899, 909.) While deeming a motion for summary judgment as a motion for judgment on the pleadings allows for granting plaintiff leave to amend the complaint, the court declines to do so in this instance.

Plaintiff states in his opposition that he has been unable to conduct discovery as to the negligence cause of action, having recently retained counsel, asserting that granting of the motion is premature and requesting leave to amend. (Plaintiff's Opposition, p. 10-11.) This contention overlooks the current posture of the case. The matter is currently set for trial to be held on November 4, 2013, which is a little more than a week away. An

assertion that discovery has not been completed so as to afford plaintiff an opportunity to file an amended complaint is insufficient at this late juncture. Plaintiff does not suggest that he will bring a motion to reopen discovery; he does not suggest that a motion to continue the current trial date is sought; and he does not present any declaration or evidence to suggest that an amendment is warranted. Based upon this, judgment on the pleadings is granted in favor of defendant City of Roseville as to the third cause of action for negligence.

To reiterate, defendants' motion for summary judgment is denied. Defendants request for the alternative relief of summary adjudication is granted in part. Specifically, defendants are granted summary adjudication as to the first cause of action. Defendants' motion for summary adjudication as to the second cause of action is denied. For the third cause of action, defendants Daniel Hahn, Officer Helliwell, Officer Anderson, Officer Jones, Officer Clark, and Officer Lewis' motion for summary adjudication is denied. As to defendant City of Roseville's request for summary adjudication, the request is deemed a motion for judgment on the pleadings and judgment on the pleadings is granted for the City of Roseville as to the third cause of action without leave to amend.

8. S-CV-0031564 Rotticci, Dana vs. Sunnyside Marina, Inc.

Defendant Jacobs Engineering Group's (Jacobs) Demurrer to the Complaint

Ruling on Request for Judicial Notice

Jacobs' request for judicial notice is granted in its entirety.

Ruling on Demurrer

Jacobs' demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Plaintiff's complaint alleges a single cause of action for negligence. A negligence action requires a showing of duty, breach of duty, proximate cause, and damages. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 614.) The complaint is pled in a conclusory fashion and fails to allege sufficient facts that establish any duty owed by Jacobs, a breach of duty, causation, or damages. Based upon these deficiencies, the demurrer is sustained with leave to amend.

Counsels' requests for telephonic appearance are granted. Counsel are informed that he must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

9. S-CV-0031629 LaPlante, David vs. Federal National Mortgage Association

The motion for summary judgment is dropped from the calendar as no moving papers were filed with the court.

10. S-CV-0031918 Yefremov, Oleg vs. Carmax Auto Superstores, et al

Defendant's Demurrer to the Third Amended Complaint (TAC)

Plaintiff's operative pleading has undergone a series of challenges by the defendant. This most recent challenge is the fourth demurrer to plaintiff's operative complaint. Defendant demurs as to the first cause of action for breach of contract and second cause of action for fraud, asserting that neither states sufficient facts to support the causes of action.

A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. A review of the TAC shows that plaintiff has alleged sufficient facts to support both the first cause of action for breach of contract and the second cause of action for fraud. Since both causes of action are sufficiently pled, the demurrer is overruled.

The defendant shall file and serve its answer or general denial on or before November 8, 2013.

Defendant's Motion to Strike the TAC

The court notes that plaintiff agrees to remove the allegations regarding attorney's fees from the TAC. In light of this, the court grants defendant's motion in its entirety. The references to "attorney's fees" in paragraph 10(c), "according to proof" in paragraph 10(c)(2), and "Plaintiff is entitled to attorney fees by an agreement or a statute according to proof." In Item BC-5 are stricken from the TAC.

11. S-CV-0032272 Green, Rodney, et al vs. Union Pacific Railroad Co.

Defendant's unopposed Motion to Compel Further Discovery Responses. Plaintiff Rodney Green shall provide responses and responsive documents, without objections, to form interrogatories, set one, nos. 2.5, 2.13, 4.1, 6.4, 6.5, 6.7, 8.8, 12.1, 12.2, 12.5, 12.6, 13.1, 14.1, and 14.2; special interrogatories, set one, nos. 6-9, 11, 14, 15, 17-19, 25, 29, 31, 32, 38, 44, 50-54, 56-68, 78, 80, 85, 89, 104, 106, 109, 110-115, 123, 129, 131, 132, 142-144, 150-153, 155, 156, 158, 159, 161, 162; and request for production of documents, set one, nos. 1, 6, 13, 23, 24, 34. Plaintiff Michael Larson shall provide responses and responsive documents, without objections, to form interrogatories, set one, nos. 2.5, 2.6, 4.1, 6.2, 6.3, 6.5-6.7, 8.8, 12.1-12.4, 12.6, 14.1, 14.2; special interrogatories, set one, nos. 7-9, 15, 17, 25, 31, 32, 37, 38, 40, 45, 56-60, 66-68, 72, 74-

76, 78, 127-133, 153, 159, 162; and request for production of documents, set one, nos. 1, 6, 13, 23, 24, 34. The plaintiffs shall provide their further responses and responsive documents on or before November 8, 2013. The request for sanctions is denied.

12. S-CV-0032366 Felix, Yvonne vs. Granada, Joshua

Plaintiff's Motion for Order That Truth of Matters be Deemed Admitted is denied. Plaintiff provides no legal authority to support compelling responses from a defaulted defendant and the authority for such a motion is questionable. (see Rylaarsdam, et al., Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2013) ¶5.196.5.) Furthermore, defendant admits that mail for defendant is undeliverable so it is unclear whether the defaulted defendant received notice of the motion. For these reasons, the request is denied.

Plaintiff's request for telephonic appearance is granted. Plaintiff is informed that he must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

13. S-CV-0032370 Top Shelf Entertainment, LLC vs. Elite Entertainment Group

Plaintiff's unopposed Motion for Attorney's Fees is granted. The trial court has broad discretion to determine the amount of reasonable attorney's fees. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The moving party has the burden of proving that the claimed hours are reasonable and necessary. (*El Escoial Owners' Assn. v. DLC Plastering* (2007) 154 Cal.App.4th 1337, 1365.) After reviewing the moving papers and supporting declarations, plaintiff has shown 50 hours of reasonably claimed time at an hourly rate of \$350. As such, plaintiff is awarded \$17,500.00 in attorney's fees.

14. S-CV-0032596 Azevedo, Richard J. Trustee, et al vs. Kutzman, Michael T.

Defendant's Motion to Strike is denied. Defendant's request for judicial notice is granted as to Exhibits 1, 2, 6, and 7. Plaintiffs' objections as to Exhibits 3, 4, 5, and 8 are sustained. A party may file a motion to strike the whole pleading or a portion of a pleading. (CCP§435(b)(1).) A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (CCP§436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (CCP§437(a).)

Defendant once again seeks to strike the references to punitive damages in the SAC. In order to allege punitive damages the plaintiff must state sufficient facts of malice, oppression, and/or fraud. (Civil C§3294(c).) A review of the SAC establishes that the pleading is sufficiently pled to support punitive damages. Based upon the foregoing, the motion is denied.

15. S-CV-0032712 Bautista, Rochelle, et al vs. Sakic, Amir, et al

Defendant's Motion for Consolidation is continued, on the court's own motion, to November 7, 2013 at 8:30 a.m. in Department 40. Defendant shall re-notice the motion for the new hearing date in both cases subject to consolidation as required under CRC Rule 3.350.

16. S-CV-0032922 Glacken, Gregory, et al vs. Bank of America, N.A., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Defendants' Demurrer to the First Amended Complaint (FAC)

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted as to Exhibit B and C pursuant to Evidence Code section 452. Defendants' request is denied as to Exhibit A.

Ruling on Demurrer

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) Defendants challenge the three causes of action alleged in plaintiffs' FAC.

The first cause of action brought by the plaintiffs assert a claim for promissory estoppel. A promissory estoppel cause of action requires (1) a clear and unambiguous promise, (2) reliance by the party, (3) the reliance was reasonable and foreseeable, and (4) injury based upon the reliance. (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901.) The deficiencies in the first cause of action begin with the failure to make specific factual allegations that demonstrate a clear, unambiguous promise. Instead, plaintiffs allege that over a nineteen-month period the defendants told plaintiffs they would qualify for a loan modification but did not offer such a modification until January of 2013. (FAC ¶¶20-22.) Then next deficiency involves insufficient allegations to establish damages. The FAC tends to assert that the delay in offering a loan modification resulted in damages. (FAC ¶¶20-26.) However, the alleged damages are pled in such a conclusory nature that it is unclear how they related to the alleged delay in offering the loan modification. For these reasons, the first cause of action fails.

The second cause of action states a claim for negligence. A lender, however, is only liable for negligence where it "actively participates" by exceeding its scope "beyond

the domain of the usual money lender.” (*Nymark v. Heart Fed. Sav. & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.) Plaintiffs make a single, conclusory allegation that defendants actions were “far more than mere lenders of money” so as to create a duty of care. (FAC ¶28.) This allegation alone is insufficient to allege the types of activities that would demonstrate defendants exceeded their scope as mere money lenders. Thus, the negligence action also fails.

The final cause of action is brought under the UCL. “The UCL does not proscribe specific activities, but broadly prohibits any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. ...By proscribing ‘any unlawful business practice,’ section 17200 ‘borrows’ violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. Because section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as ‘unfair’ or ‘deceptive’ even if not ‘unlawful’ and vice versa.” [Citations and quotations omitted.] (*Puentes v. Wells Fargo Home Mortg., Inc.* (2008) 160 Cal.App.4th 638, 643-644.) Since the third cause of action relies upon the prior causes of action and those fail to withstand defendants’ demurrer, the UCL action also fails.

The remaining issue to address is whether plaintiffs should be afforded leave to amend their pleading. “The burden of showing that a reasonable possibility exists that amendment can cure the defects remains with the plaintiff; neither the trial court nor this court will rewrite a complaint. [Citation.]” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43-44.) In their opposition, plaintiffs allege new facts to further support their original three causes of action along with seeking leave to pled causes of action for declaratory relief and wrongful foreclosure. Since plaintiffs have made a sufficient showing that they may be able to plead additional facts to cure the deficiencies in the FAC, the demurrer is sustained with leave to amend. Plaintiffs are also allowed leave to add the additional causes of action for declaratory relief and wrongful foreclosure.

The second amended complaint shall be filed and served on or before November 8, 2013.

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Defendant's Bank of America's Demurrer to the Complaint

Defendant's demurrer is sustained with leave to amend. The request for judicial notice is granted in its entirety. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) The complaint alleges six causes of action in its caption. However, the substance of the complaint only alleges four causes of action: (1) violations under Civil Code sections 2923 and 2924; (2) breach of written contract; (3) breach of the covenant of good faith and fair dealing; and (4) deceit. The court will only address those causes of action that are substantively pled.

The first cause of action for violations under Civil Code sections 2923 and 2924 fails. Specifically, the complaint pleads very few facts as to the moving defendant so it cannot sufficiently sustain such a cause of action.

A cause of action for breach of written contract requires that the terms of the contract are stated verbatim in the complaint or by attaching a copy of the written instrument to the complaint. (*Otworth v. S. Pac. Transp. Co.* (1985) 166 Cal.App.3d 452, 458-459.) The second cause of action fails to since it does not include a verbatim recitation of the terms of the written contract or a copy of the contract.

A breach of the covenant of good faith and fair dealing permits a recovery in contract. (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1054.) It requires a plaintiff allege a valid contract between the parties. Moreover, the implied covenant cannot be extended to create obligations not contemplated by the contract. (*Racine & Laramie v. Department of Parks and Recreation* (1992) 11 Cal.App.4th 1026, 1031-32.) The third cause of action fails since the complaint does not state the existence of a valid contract.

Fraud must be specifically pled, with facts stating how, when, where, to whom and by what means any misrepresentations were made to a plaintiff. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) In addition, fraud allegations against a corporate defendant require the names of individuals who made misrepresentations, their authority to speak on behalf of the corporation, whom the individuals spoke to, what was said or written, and when it was said or written. (*Ibid.*) The complaint fails to plead the level of specificity necessary to sustain a deceit cause of action. Based upon the deficiencies in the complaint, the demurrer is sustained with leave to amend.

The second amended complaint shall be filed and served on or before November 29, 2013.

Defendant Bank of America's Motion to Expunge Lis Pendens

The unopposed motion is granted. Defendant's request for judicial notice is granted in its entirety. A party with an interest in real property may move at any time to expunge a lis pendens where (1) the complaint does not contain a real property claim, (2) the plaintiff cannot establish the probable validity of his or her claim, or (3) adequate relief may be secured to the plaintiff by the moving party's posting of a bond. (CCP§§405.30-405.33.) The party opposing the motion has the burden of showing the existence of a real property claim. (CCP§405.30; *Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 647.) The plaintiff has failed to make a showing that the complaint contains a viable real property claim.

As the prevailing party, defendant is awarded \$2,000.00 in attorney's fees. (CCP§405.38; see *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1018.)

18. S-CV-0033396 Roberts, Kenneth, et al vs. JPMorgan Chase, Inc., et al

Bank of America's Demurrer to the Complaint is continued, on the court's own motion, to October 31, 2013 at 8:30 a.m. in Department 40 to be heard in conjunction with JP Morgan Chase Bank's Demurrer.

19. S-CV-0033420 Dennis Chez vs. Select Portfolio Servicing, Inc., et al

The OSC re Preliminary Injunction is continued to November 21, 2013 at 8:30 a.m. in Department 40 pursuant to the stipulation of the parties. The temporary restraining order shall remain in effect until further order of the court.

20. S-CV-0033488 Gill, Pamela vs. Sierra Joint Comm. College District, et al

Plaintiff's Application for Order Relieving Plaintiff of Obligation to Timely Present Claim is continued, on the court's own motion, to November 14, 2013. Plaintiff originally deemed that her claim was untimely for the purposes of the application. However, plaintiff now suggests in her reply that she seeks a determination of whether the claim was timely presented to the defendant. Since this was not originally discussed in plaintiff's moving papers, the court requires supplemental briefing from the parties to clarify whether such a determination may be made by the court within this application and further briefing regarding whether her initial claim was timely presented to defendant.

Plaintiff shall file and serve her supplemental brief on or before November 1, 2013. Defendant shall file and serve its supplemental brief on or before November 8, 2013.

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21. S-CV-0033596 WNC & Associates, Inc., et al vs. Project Go, Inc., et al

Defendant Project Go, Inc.'s Motion Pursuant to Corp Code §15908.02 as to Colonial Village Auburn, LP

The motion is granted in its entirety. Contrary to plaintiffs' assertions, the motion is not moot based upon the dismissal of the fourth and fifth causes of action. Plaintiffs still seek specific dissolution relief under the tenth cause of action, which is subject to Corp C§15908.02. The action is stayed except as to the sixth and ninth causes of action. The court confirms September 3, 2013 as the valuation date for the purposes of appraisal. The court also affirms the \$10,000 undertaking. The parties are to each submit the names of three disinterested appraisers for appointment under Corp C§15908.02(d).

Defendant Project Go, Inc.'s Motion Pursuant to Corp Code §15908.02 as to Colonial Village Roseville, LP

The motion is granted in its entirety. Contrary to plaintiffs' assertions, the motion is not moot based upon the dismissal of the fourth and fifth causes of action. Plaintiffs still seek specific dissolution relief under the tenth cause of action, which is subject to Corp C§15908.02. The action is stayed except as to the sixth and ninth causes of action. The court confirms September 3, 2013 as the valuation date for the purposes of appraisal. The court also affirms the \$10,000 undertaking. The parties are to each submit the names of three disinterested appraisers for appointment under Corp C§15908.02(d).

22. S-CV-0033638 Castaneda, Laura - In Re the Petition of

The appearance of the parties is required on the Petition for Compromise of Minor's Claim. The court notes that the petition fails to include a recent physician diagnosis of the minor's present condition. The petition also fails to include the name of the financial institution where the monies will be deposited along with failing to address the reasonableness of the attorney's fees requested or attaching a copy of the fee agreement. The appearance of the minor at the hearing is waived.

These are the tentative rulings for civil law and motion matters set for Thursday, October 24, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, October 23, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.
